QUESTIONS PRESENTED

1. (a) Whether this Court should dismiss the writ as improvidently granted where the Court of Appeals ruled, as an independent ground supporting its judgment and pursuant to the longstanding practice in the D.C. Circuit, that the District Court abused its discretion in refusing to consider supplemental affidavits irrefutably establishing respondent's standing.

   (b) If not, whether the Court of Appeals' decision on the District Court's abuse of discretion was correct.

2. Alternatively, whether the Court of Appeals was correct in its conclusion that respondent had standing in its representational capacity where the record as a whole, including the Government's own evidence, proved injury-in-fact to the organization's members from the governmental program at issue.

3. Alternatively, whether the case should be remanded to the Court of Appeals for its decision, not heretofore necessary, as to whether respondent had standing because the record as a whole demonstrated injury to the organization itself.

PARTIES TO THE PROCEEDINGS

Respondent adopts the Government's statement except that United States Representative John F. Seiberling intervened in the lawsuit to vindicate his own interests.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: Page

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No. 89-640

MANUEL LUJAN, JR., SECRETARY OF THE INTERIOR, *et al.*,

Petitioners,

v.

NATIONAL WILDLIFE FEDERATION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT

CONSTITUTIONAL AND STATUTORY PROVISIONS

In addition to Article III, Section 2 of the Constitution and the Administrative Procedure Act, 5 U.S.C. § 702, cited by the Government, the following statutory and regulatory provisions are cited in this brief and included in Appendix A for the convenience of the Court: The National Environmental Policy Act, 42 U.S.C. § 4332(2)(C); the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701(a)(2), (a)(3), (a)(7); 1702(e), (d), (j); 1712(a), (d), (f); 1714(a), (*l*); 1732(a); 1739(e); 1740; Pub. L. No. 94-579, § 701(c); 43 C.F.R. §§ 1601.0-5(k), .0-6.

STATEMENT

This action seeks judicial review of the environmental impact of a single federal program, the ongoing "Land Withdrawal Review Program" (Program) of the United

States Department of the Interior (Government).[1] Under this Program, the Government terminated or revoked restrictions on approximately 180 million acres of federal land between 1981 and mid-1985, and thereby opened the land for commercial uses, including mining and mineral exploitation. Although the trial court issued a preliminary injunction in 1985, the injunction was subsequently vacated by the court on November 4, 1988, and the Program (with its consequent environmental impact) thus continues unimpeded today.

In July 1985, respondent, the National Wildlife Federation (NWF), filed suit challenging the Program as violative of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701 *et seq.* (1982), the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.* (1982), and the Administrative Procedure Act (APA), 5 U.S.C. §§ 551 *et seq.* (1982). In its amended complaint filed August 19, 1985, NWF stated that it had over 4.5 million members and supporters and alleged that:

> NWF and its members are suffering and will continue to suffer injury in fact as a result of the challenged actions. Members of NWF use and enjoy the environmental resources that will be adversely affected by the challenged actions. They regularly use these resources for fishing, hunting, bird and wildlife watching, canoeing and boating, hiking, camping, and other similar activities. These persons' use and enjoyment of these resources will be irreparably injured if the defendants are permitted to terminate protective land use restrictions and thereby open up public lands to exploration, development, and disposal, without the development of land use plans, without prior preparation of adequate environmental impact statements, and without compliance with ap-

[1] The Government disputes that the Program is a program and characterizes it as "hundreds of executive branch decisions." Ptrs. Br. 2. But *see* p. 23 n.36, *infra*.

> plicable laws, regulations, and procedures. Among other things, the challenged actions will adversely affect plaintiff and its members by destroying fish and wildlife habitat, and by impairing natural beauty. [JA 12.[2]]

NWF also alleged that the Government had violated the law, and had injured both NWF and its members, by denying them information about the Program and an opportunity to participate in decision-making relating to the Program. JA 12.

NWF appended as Exhibit A to the amended complaint a list of 814 examples of land status actions, including terminations of land classifications and land withdrawals,[3] taken by the Government pursuant to the challenged Program since January 1, 1981. JA 25-50.

Congress enacted FLPMA in 1976 in a comprehensive effort to rewrite the law of federal lands. The Act provides in Section 701(c) that "[a]ll withdrawals, reservations, classifications, and designations in effect as of the

[2] "JA" refers to the Joint Appendix in this Court, "Pet. App." to the Appendix to the Government's petition for a writ of certiorari, "Oppcert. App." to the Appendix to NWF's brief in opposition, "Ct. App. JA" to the Joint Appendix before the Court of Appeals, "ER" to the Excerpt of Record in the Court of Appeals, "Tr." to the transcript of a hearing in the District Court, and "Def.-Int. Ex." to an exhibit introduced by defendant-intervenor Mountain States Legal Foundation. While some affidavits, and some exhibits to affidavits, are set forth in the Joint Appendix, the Appendix to the petition, and the Appendix to the brief in opposition, others are not. Thus, "1B Edwards Aff. Ex. 21B" refers to Exhibit 21B to the Edwards affidavit marked 1B; while the 1B Edwards affidavit appears in the Joint Appendix (JA 87), Exhibit 21B to that affidavit does not.

[3] "Classifications" designate public lands for retention in federal ownership. *See* 43 U.S.C. § 315f. "Withdrawals" remove or segregate designated land otherwise in the public domain, and thus exempt it from the application of one or more federal disposal laws. *See* 43 U.S.C. § 1702(j). The District Court found that withdrawals and classifications represent "the only absolute shield against private exploitation of these federal lands." Pet. App. 134a.

date of the approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law." Pub. L. No. 94-579, § 701(c), 90 Stat. 2743 (1976).

Between FLPMA's enactment in 1976 and 1980, the Government engaged primarily in completing an inventory of withdrawn or classified lands. JA 91-93. In 1981, however, the Government began a comprehensive program to terminate withdrawals and classifications "to open 'locked-up' Federal land to mineral exploration and development through aggressive pursuit of the withdrawal review program." Pl. Ex. 70. The Bureau of Land Management (BLM) issued new instructions to its field offices to eliminate withdrawals as quickly as possible:

> The new administration has stated clearly its objective to eliminate all unnecessary withdrawals of Federal lands, opening as many acres as possible to the operation of the mining and mineral leasing laws. [Pl. Ex. 73.]

A new guidance manual setting forth "Program Direction" and "Program Priorities" was issued. 1B Edwards Aff. Ex. 21B. Terminations of withdrawals and classifications subsequently proceeded rapidly under the Program. By mid-1985, the Government had terminated protective classifications and withdrawals for approximately 180 million acres of public land. JA 51-54, 65, 103; Parker Aff., par. 35.

The Program thus opened many millions of acres of public land to commercial development, particularly mineral exploitation, that have important recreational, environmental, or other public values. For example, the Government terminated a reclamation withdrawal covering 34,285 acres in Utah, opening 8,360 acres to the operation of the mining laws, 46 Fed. Reg. 7,348 (1981), despite the prospect that mining would have an adverse impact on two endangered species of fish, as well as potential impacts on endangered bald eagles and peregrine

falcons. Pl. Ex. 74. In addition, campgrounds and other recreational sites have been opened to mining and mineral leasing. *See, e.g.*, 49 Fed. Reg. 32,808 (1984); 47 Fed. Reg. 11,671 (1982).

The Government's evidence showed that the opening of lands through terminations even prior to the issuance of the injunction in 1985 had resulted in the staking of over 7,000 mining claims and 91 operating mines,[4] that over eight million acres had been opened to mineral leasing,[5] and that 1,000 or more leases had been issued, with several hundred more pending. Parker Aff., par. 44.

The Government's ongoing Land Withdrawal Review Program will be dispositive ultimately of the future status of nearly 250 million acres of federal land. JA 92, 99. Yet the Government prepared no environmental impact statement (EIS) prior to implementing the Program, despite NEPA's requirement, 42 U.S.C. § 4332(2)(C), that every major federal action "significantly affecting the quality of the human environment" must be preceded by an EIS. NWF, in Count IV of its amended complaint, JA 18-19, sought compliance with this law.

Recognizing the potentially far-reaching effect of the disposition of federal lands under FLPMA, Congress enacted key provisions requiring land use plans. Thus, FLPMA provides that

> the national interest will best be realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process. [43 U.S.C. § 1701(a)(2).]

That broad policy is made specific in Section 202 of the Act with the requirement that land use plans "shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses." 43

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[4] Ct. App. JA 162-163; JA 73, par. 33; JA 108, par. 23.

[5] JA 66-67, par. 26; JA 104, par. 20.

U.S.C. § 1712(a). *See also* 43 U.S.C. §§ 1701(a)(3), 1712(d); Pub. L. No. 94-579, § 701(c), 90 Stat. 2743. The Government's regulations define the land use plans required by FLPMA as "Resources Management Plans" (RMPs). 43 C.F.R. § 1601.0-5(k) (1989). At the time the lawsuit was filed, the Government had completed only nine of more than 100 required RMPs. Pl. Ex. 4. Count I of NWF's amended complaint challenged the Government's decision to proceed with its Program in the absence of the required land use plans. JA 15-16.[6]

NWF also sought to enforce other provisions of FLPMA:

—The Act requires the Government to submit recommendations regarding the revocation of withdrawals to the President and to Congress prior to opening the lands. 43 U.S.C. § 1714(*l*); *see also* Pub. L. No. 94-579, § 701(c), 90 Stat. 2743. The Government has readily admitted that not one of the terminated withdrawals covering almost 20 millions acres of federal land has been submitted under this review provision. Tr. (Sept. 16, 1985) 38. Count II of the amended complaint challenged this failure. JA 16-17.[7]

[6] Rather than preparing RMPs, the Government relied on "Management Framework Plans," which do not meet the requirements established for RMPs. The District Court found in 1985 that the Government's "reliance on 'Management Framework Plans' (MFPs) is misplaced and does not satisfy the statutory expectations of 'land use plans.'" Pet. App. 132a.

[7] The Government moved to dismiss Count II for lack of standing. The District Court granted the intervention of United States Representative John F. Seiberling on Count II, confirmed his standing, and upon Congressman Seiberling's retirement from Congress, allowed the substitution of Congressman Bruce F. Vento, Seiberling's successor as Chairman of the Subcommittee on National Parks and Public Lands, and reaffirmed his standing. Order of June 2, 1987. Congressman Vento withdrew his separate appeal after the 1989 unanimous Court of Appeals ruling that NWF had standing, since where one plaintiff has standing, courts do not generally consider whether other plaintiffs also have standing. [Continued]

—FLPMA requires the Government to provide opportunities for meaningful public participation in "the preparation and execution of plans and programs for, and the management of, the public lands." 43 U.S.C. § 1739(e); *see also* 43 U.S.C. §§ 1701(a)(5), 1712(f), 1702(d). Count VII of NWF's amended complaint challenged the Government's failure to provide public participation in the Program and in the actions completed under its aegis. JA 20-21.[8] The District Court found that "[d]espite the statutory command, [the Government] ha[s] failed to provide for public participation in [its] withdrawal revocation decisions." Pet. App. 133a.

—FLPMA requires that the Secretary of the Interior "with respect to the public lands *shall* promulgate rules and regulations to carry out the purposes of this Act and other laws applicable to the public lands." 43 U.S.C. § 1740 (emphasis added); *see also* APA, 5 U.S.C. § 553. Count V of NWF's amended complaint challenged the

[7] [Continued]
Watt v. *Energy Action Educ. Found.*, 454 U.S. 151, 160 (1981); *see* Pet. App. 130a.

[8] For example, under NEPA the Government is required affirmatively to solicit comments on any draft EIS "from those persons or organizations who may be interested or affected." 40 C.F.R. § 1503.1(a)(4) (1989). Since no EISs were prepared, NWF was afforded no opportunity to comment on the potential environmental consequences of a federal Program affecting millions of acres of federal land.

Nor did the Government provide any other opportunities for public participation in the development and execution of the Program. It failed to adopt regulations governing the Program in accordance with the notice and comment provisions of the APA, 5 U.S.C. § 553. Under existing planning regulations, the Government was required to, but did not, publish draft plans for public comment as well as complete EISs on resource planning areas. 43 C.F.R. § 1610.2(f)(3) (1989). FLPMA also specifically requires, 43 U.S.C. §§ 1701(a)(5), 1739, opportunities for public involvement in all land management decisions. Yet no notice of proposed withdrawal and classification terminations was provided to the public. Govt's Responses to Plaintiff's 2d Set of Interrogatories No. 1(f).

Government's failure to promulgate these regulations to guide implementation of the Program. JA 19-20.[9]

Evidence presented by the Government itself demonstrated that if the statutory and regulatory scheme had been followed, the results of the land withdrawal review process almost certainly would have been different.

Affidavits showed, for example, that before terminations were completed, the Government created not EISs but in some instances Environmental Assessments ("EAs"), which were not available for public comment and each of which was, in part, "to determine *whether* an EIS is required"[10]; did not use RMPs but rather MFPs[11]; did not publish notice to the world in the *Federal Register* but rather in some instances carried out selective telephone calls, personal interviews, town meetings, workshops, and the like[12]; and did not work from regulations but rather from a series of internal manuals. instructional memoranda. directives, and brochures.[13]

These affidavits also showed that when it was later brought to the Government's attention that certain terminations would adversely impact scenic resources or fish and wildlife habitat, the terminations often had to be revised.[14] It was NWF's position that if the Government

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[9] In addition, Count III of the amended complaint attacked the Government's failure to follow FLPMA's requirement, 43 U.S.C. §§ 1732(a), 1702(c), that public lands be managed in accordance with principles of multiple use and sustained yield, JA 17, and Count VII challenged the Government's failure to follow applicable regulations in carrying out its Program. JA 21. Count VI, JA 20, was subsequently withdrawn.

[10] JA 63 (emphasis added); *see also* JA 60-61, 135, 193-194.

[11] JA 125, 126-137, 179-194; *see* n.6, *supra*.

[12] JA 127, 129, 134, 137-139, 183, 194.

[13] JA 57, 59, 60, 88, 91-95, 102, 126-127, 182-184, 187-189, 190, 192-193.

[14] JA 134, 136-137.

had followed the congressional command, these adverse impacts would have become clear at the outset, rather than in a selective and haphazard fashion after the terminations had already occurred, and would have prevented terminations across the board.

Thus, in its request for permanent relief, NWF sought, among other things, the completion of the required EISs, the promulgation of regulations governing the Program, adequate notice about, and opportunities for public participation in, the Program, and the submission of proposed actions to the Congress and the President for review. JA 22.

To demonstrate the injuries actually suffered by its members, NWF submitted in April 1986 the affidavits of Peggy Kay Peterson and Richard Loren Erman. Pet. App. 187a-192a. In their affidavits which are dealt with more fully in the Argument below, both Peterson and Erman alleged that they used the federal lands adversely impacted by the Government's Program. They both gave specific examples of areas in the vicinity of which they recreated, areas which had been opened to mining by the Program, areas where the aesthetic beauty and wildlife habitat had been threatened, and areas where their own recreational use and aesthetic enjoyment had been adversely affected by the Government's Program. They also swore that their interest in participating in decisions affecting the preservation and protection of these lands had been adversely impacted by the Government's failure to provide proper notices and opportunities to participate. *Id.*[15]

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[15] In June 1986, the Government served subpoenas on NWF, seeking to take 15 depositions in 11 western states and the District of Columbia. The admitted purpose of these depositions was to demonstrate that NWF could not prove standing to bring this action. NWF moved for a protective order, arguing that its affidavits demonstrated its standing and, therefore, additional discovery as to this issue would be unreasonably cumulative within the meaning of Fed. R. Civ. P. 26(c)(1). The District Court agreed and issued the requested protective order. Pet. App. 170a.

As noted, NWF's complaint had also alleged that it was injured in its own right, as an organization, by its inability: (1) to obtain information on the Government's Program and the actions completed under its aegis, and (2) to participate in the Government's decision-making. JA 12. In support of these allegations, NWF submitted in May 1986 the sworn declaration [16] of Lynn A. Greenwalt, then its Vice President for Resources Conservation. Pet. App. 193a.

Greenwalt's declaration, also discussed in more detail below, demonstrated how NWF had been injured in its own right, as opposed to in its representational capacity. NWF had been deprived of vital information about, and an opportunity to participate in, the decisions regarding the Program, and it would be financially harmed by its inability to carry out the tasks its members paid it to perform. Pet. App. 193a-194a.

Upon finding that NWF was likely to succeed on the merits, the District Court enjoined the Government's Program in December, 1985. Pet. App. 131a, 184a.

NWF moved for summary judgment on June 23, 1986. In its cross-motion filed in September 1986, the Government raised the standing issue in regard to the entire amended complaint.[17]

In December 1987, the Court of Appeals sustained the District Court's preliminary injunction, noting that

> the affidavits [of Peterson and Erman] specifically identify locations where [NWF's] members' interests are threatened by the [Government's] actions in lifting restrictions on mining and other forms of natural resource exploitation. Indeed, according to the [Government], mineral claims have already been staked in an area in which one member uses and enjoys the resources. [Pet. App. 80a.]

[16] "Affidavit" and "declaration" are sometimes hereinafter used interchangeably. *See* 28 U.S.C. § 1746.

[17] No defendant challenged the standing of the congressional intervenor.

Judge Williams, concurring with the panel's opinion on the standing issue, applied a summary judgment standard but nevertheless concluded that

> the issue of standing is largely academic. * * * By the time the case was submitted to this court, the defendants appear to have conceded the bare minimum necessary for standing. [Pet. App. 85a.[18]]

On July 22, 1988, the District Court heard oral argument on both motions for summary judgment. ER 138. At the close of argument, the District Court ordered the case submitted except as to standing and requested additional memoranda from both sides on that issue. ER 110, 227-228. NFW filed a memorandum on its standing that included five supplemental affidavits. Oppcert. App. 1-17. These declarations were made by members of NWF who use specific federal lands in five Western states that have been affected by the Program and whose continued use and enjoyment of those lands are thereby threatened.

NWF member David Doran's declaration details his extensive recreational activities on the federal lands near Coos Bay, Oregon. On April 24, 1984, pursuant to the Program, the Government terminated two protective withdrawals and opened to disposal under the public land laws over 1500 acres of land on which Doran recreates. Oppcert. App. 2; 49 Fed. Reg. 17,502 (1984). The Government proposes to dispose of these lands for the "development of a marine industrial park." Ct. App. JA 145-147. As a result, lands which currently provide habitat for the endangered snowy plover and peregrine falcon, and provide birdwatching opportunities for Doran, will be cleared and paved. Oppcert. App. 2.

NWF member Merlin McColm resides in Elko, Nevada, and uses many public lands in Nevada for recreation.

[18] In April 1988, the Court of Appeals denied petitions for rehearing. Pet. App. 116a.

Areas adjacent to the Roberts and Tuscarora Mountains frequented by him have been opend to mining and other forms of development under the Program. Oppcert. App. 5; *see also*, 47 Fed. Reg. 7,236 (1982); 47 Fed. Reg. 6,851 (1982). He has already observed the ecological damage stemming from these actions in the form of "sedimentation from mining runoff and direct habitat destruction." Oppcert. App. 5.[19]

NWF member Stephen Blomeke is an avid hunter and travels "considerable distances across the state of Colorado to access areas containing prime habitat" for game species. Oppcert. App. 8. In doing so, he uses numerous federal campgrounds and recreation areas. *Id.* Pursuant to the Government's Program, many of these public areas have been opened to disposal and development. *Id.* at 8-10; *see also* 47 Fed. Reg. 7,414-23 (1982). Prior to the issuance of the now-vacated injunction in this case, 25 mining claims already had been staked on campgrounds frequented by Blomeke. JA 82.

NWF member Will Ouellette lives in rural New Mexico and uses the federal lands in the surrounding countryside almost on a daily basis. Oppcert. App. 11-13. Many of the areas he uses, including the Tent Rocks Recreation Area, have been opened to disposal and development by the termination of protective land classifications. *Id.* at 12-13. The Tent Rocks area of New Mexico is a unique environment. "Comparable formations are found only in Turkey."[20] Yet the Government terminated the classifications that protected these lands for public enjoyment

[19] According to Government submissions, three mining claims have been staked on 80 acres previously protected by these withdrawals. JA 82. All three were staked the year the lands were opened, and no claims were staked the previous two years. *Id.*

[20] Bureau of Land Management, *Draft Rio Puerco Resource Management Plan and Environmental Impact Statement* at C-30 (1985) (attached as App. III to Ouellette Declaration, Oppcert. App. 11).

and recreation, to the detriment of Ouellette as well as many others.

In addition, NWF member Peterson supplemented her earlier affidavit and identified in detail the challenged actions responsible for her injury. She provided an example of a specific proposal to develop a uranium mine on lands which previously had provided her with wildlife habitats for hiking, camping, hunting, and fishing. Oppcert. App. 15-17.

On November 4, 1989, the District Court summarily rejected NWF's supplemental affidavits as untimely, reversed its previous rulings on NWF's standing, granted summary judgment to the Government on the issue of standing, dissolved the preliminary injunction, and dismissed the entire case, including the unheard claims of Congressman Vento. Pet. App. 26a-37a, 158a.

NWF appealed. A three-judge panel of the Court of Appeals unanimously reversed the holding of the District Court on three separate and alternative grounds:

> (1) the affidavits initially submitted by NWF in support of its motion for summary judgment "clearly alleged facts showing that its members were 'among the persons injured'" by the Government, Pet. App. 15a;
>
> (2) because these same affidavits had provided "adequate grounds for NWF to establish irreparable harm" for a preliminary injunction, they also demonstrated sufficient injury-in-fact to meet the test of standing, so that the Court of Appeals' previous opinion upholding the preliminary injunction established the law of the case on this issue, *id.* at 19a, 24a; and
>
> (3) "[t]he law of this circuit" allowed NWF to file the supplement affidavits, and it was an abuse of discretion for the District Court to refuse the filing in light of the equities of the case; NWF's supplemental declarations "easily satisfy the level of

specificity needed for standing under any of the Supreme Court's articulated tests." *Id.* at 21a.

The Court of Appeals then remanded the case for disposition on the merits. Because it directed the District Court to address NWF's substantive claims "with dispatch," the Court of Appeals found it unnecessary to reinstate the preliminary injunction. *Id.* at 24a-25a. Thus, at this time, the Government's Program is proceeding apace,[21] without an EIS, the regulations mandated by Congress, complete RMPs, meaningful public participation, or the statutory referrals to Congress and the President.

SUMMARY OF ARGUMENT

The decision below is fully consistent with that court's practices concerning proof of standing and with this Court's precedents on the substantive requirements for standing.

1. The decision rests on a ground so unimportant and noncontroversial that we respectfully submit that the Court should dismiss the writ as improvidently granted. As an independent basis for its holding, the Court of Appeals determined that the District Court had abused its discretion in refusing to consider respondent's supplemental affidavits, which "easily satisfy the level of specificity for standing under any of the Supreme Court's articulated tests." Pet. App. 21a. The decision that the District Court abused its discretion was based on the D.C. Circuit's longstanding practice of allowing supplementation of the record where standing questions are raised, and vindicated the interests of fundamental fairness where the Government itself submitted supplemental evidence on the standing question and the District Court had requested an additional filing. There are no special and important reasons for this Court to review the determination that, in these circumstances, the District Court abused its discretion, and accordingly the writ should be dismissed.

[21] *See e.g.*, 55 Fed. Reg. 4,838 (1990); 55 Fed. Reg. 2,886 (1990).

Alternatively, the Court should affirm the judgment below because the Court of Appeals correctly determined that the District Court abused its discretion.

The Government will not be harmed by such a dismissal or affirmance on the alternative ground. Indeed, because the injunction originally issued by the District Court is no longer in effect, the Government's Program continues unimpeded. A dismissal or affirmance will operate only to remand the legal issues to the lower courts for determination.

2. Alternatively, the Court of Appeals was correct in upho'ding respondent's standing on the basis of the evidence in the record at the time of the District Court's decision. NWF's representational standing was established by the Peterson and Erman affidavits read together with the Government's own evidence. The record as a whole plainly demonstrates that these NWF members recreated in areas that were illegally opened to commercial interests, including mining, and that their use and enjoyment of these lands were thereby adversely affected. This Court's cases require no more.

3. Finally, NWF submits that it has standing on its own account, quite apart from its representational standing considered below. Because of its alternative holdings, the Court of Appeals did not reach this question. At a minimum, the case should be remanded to the Court of Appeals for its finding in the first instance as to whether NWF has standing in its own right.

ARGUMENT

I. THE WRIT SHOULD BE DISMISSED AS IMPROVIDENTLY GRANTED

NWF respectfully submits that the writ of certiorari should be dismissed as improvidently granted.

The Court of Appeals reversed the District Court on three separate and distinct grounds.[22] If any of them were proper, the judgment would have to be affirmed. *See, e.g., The Monrosa* v. *Carbon Black Export, Inc.*, 359 U.S. 180 (1959).

One of these independent grounds was that the District Court had improperly refused to consider the five supplemental affidavits filed by NWF in response to the District Court's request for supplemental memoranda on the standing issue. "The law of this circuit," the court held, allows the plaintiff to supplement the record to cure alleged defects in standing. Pet. App. 21a. The court pointed out that "[n]o party to this litigation seriously disputes that NWF's supplemental affidavits, if considered, easily satisfy the level of specificity for standing under any of the Supreme Court's articulated tests." *Id.*[23] Therefore, the court held, the District Court had abused its discretion in refusing to allow NWF to supplement the record with affidavits that demonstrate beyond question standing on behalf of NWF's members and, thus, on behalf of NWF.

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[22] The Court of Appeals repeatedly made clear that these were alternative holdings, any one of which justified reversal. Pet. App. 18a, 20a, 21a ("Thus, even if the original affidavits were insufficient and even if we assume that this court's [prior] decision * * * did not decide the issue, these supplemental affidavits offer enough detail to establish NWF's standing"), 24a.

[23] The Acting Solicitor General states that the Government contested the sufficiency of these affidavits before the Court of Appeals. Ptrs. Br. 40 n.30. It is significant, however, that he does not do so before this Court. Nor could he. As set forth in the Statement, *supra*, these affidavits were specific, and their contents were largely corroborated by the Government's own evidence.

1. This Court has recognized that federal courts have the inherent power to "manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Link* v. *Wabash R.R.*, 370 U.S. 626, 630-631 (1962).[24] They may also declare the law peculiar to their own jurisdictions, usually without interference by this Court.[25] Here, the D.C. Circuit has exercised its inherent powers and declared that under the well-established law of the Circuit,[26] it was an abuse of discretion for the District Court to refuse to consider these affidavits.

Moreover, even if this were not a matter of local practice, the decision below fully accords with the spirit of

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[24] In *Link*, this Court upheld the local practice of dismissing complaints for lack of prosecution without providing prior notice and hearing. *See also* 28 U.S.C. § 2071 (granting federal courts power to prescribe rules consistent with Acts of Congress and this Court's rules); Fed. R. Civ. P. 83 (establishing District Courts' power to issue rules); *Frazier* v. *Heebe*, 482 U.S. 641, 645 (1987); quoting *In re Ruffalo*, 390 U.S. 544, 554 (1968) (White, J., concurring) (citation omitted) (lower courts have discretion to adopt local rules that are necessary to carry out the conduct of business so long as those rules are consistent with " 'the principles of right and justice' ").

[25] "This Court has long expressed its reluctance to review decisions of the courts of the District [of Columbia] involving matters of peculiarly local concern, absent a constitutional claim or a problem of general federal law of nationwide application. *See, e.g., Griffin* v. *United States*, 336 U.S. 704, 717-718 (1949); *Fisher* v. *United States*, 328 U.S. 463, 476 (1946). *See also Miller* v. *United States*, 357 U.S. 301, 306 (1958)." *Pernell* v. *Southall Realty*, 416 U.S. 363, 366 (1974). *See also Selvage* v. *Collins*, 58 U.S.L.W. 4221, 4222 (U.S. Feb. 21, 1990); *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 327 (1986).

[26] *See National Wildlife Fed'n* v. *Hodel*, 839 F.2d 694, 703 (D.C. Cir. 1988); *Wilderness Soc'y* v. *Griles*, 824 F.2d 4, 17 n.10 (D.C. Cir. 1987); *Phillips Petroleum Co.* v. *FERC*, 792 F.2d 1165, 1169 (D.C. Cir. 1986); *Health Research Group* v. *Kennedy*, 82 F.R.D. 21, 28 & n.11 (D.D.C. 1979). *See also DKT Memorial Fund, Ltd.* v. *Agency for Int'l Dev.*, 810 F.2d 1236, 1239 (D.C. Cir. 1987) (granting plaintiff's motion to amend its complaint to cure alleged defect in standing where plaintiff moved to amend during oral argument).

this Court's rulings[27] and with those of other lower courts.[28]

2. Perhaps most importantly, the Government improperly invokes Rule 56 for the proposition that NWF was too late in filing the five additional affidavits after the

[27] *See Gladstone, Realtors* v. *Bellwood*, 441 U.S. 91, 112-113 n.25 (1979) (District Court permitted to allow amendment of complaint by parties who did not reside within the neighborhood where harm was done); *see also Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 377-379 (1982) (plaintiffs allowed on remand to make more definite allegations in complaint relating to injury); *see also id.* at 382-383 (Powell, J., concurring); *Gladstone, Realtors*, 441 U.S. at 114-115 & n.31; *Warth* v. *Seldin*, 422 U.S. 490, 501 (1975) (trial court can allow plaintiff to supply, by amendment to complaint or affidavits, further particularized allegations as to standing); *United States* v. *Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 689-690 n.15 (1973) (doubts about standing can be resolved by motions for more definite statements and further evidence); *Sierra Club* v. *Morton*, 405 U.S. 727, 735-36 n.8 (1972) (plaintiff can seek in District Court to amend its complaint to show use of areas where harm occurred). In fact, even in a mootness context, this Court has recently indicated that an affidavit submitted after argument in this Court could be considered, with appropriate controverting submissions by opposing parties, in the Court of Appeals or in the District Court after remand. *Lewis* v. *Continental Bank Corp.*, 58 U.S.L.W. 4330, 4332-33 (U.S. Mar. 5, 1990).

[28] Courts of Appeals that have considered supplemental affidavits outside the standing context have held that a trial court may not dispose of a case on summary judgment without giving each party an opportunity to submit their respective supporting and answering affidavits, and to supplement them if need be. *E.g., Brobst* v. *Columbus Servs. Int'l*, 761 F.2d 148, 154 (3d Cir. 1985), *cert. denied*, 108 S. Ct. 777 (1988); *Alghanim* v. *Boeing Co.*, 477 F.2d 143 (9th Cir. 1973).

Several trial courts have addressed the supplemental affidavit issue in the standing context. *See, e.g., Sierra Club* v. *Marsh*, 701 F. Supp. 886, 903 (D. Me. 1988) (refusing to convert motion to dismiss into motion for summary judgment where court was not satisfied that all parties had presented pertinent materials on standing); *Shakman* v. *Democratic Org.*, 560 F. Supp. 863, 865 n.2 (N.D. Ill. 1983) (defendant's contention that plaintiff lacked standing was mooted by plaintiff's supplemental affidavit).

July 22, 1988 hearing before the District Court. Ptrs. Br. 39-40. What the Government fails to tell the Court is that *at the hearing itself*, without prior notice to NWF, the Government introduced a five-page exhibit detailing the status of various RMPs for areas in the 11 affected States, including the Arizona Strip and the Green Mountain area already addressed by NWF, and the Coos Bay, Oregon area subsequently addressed by one of the five affidavits.[29]

Thus, two points are evident. First, the Government cannot complain about an alleged tardiness under Rule 56 when it violated the Rule itself under its own interpretation. It would be wholly unfair—and in fact a violation of fundamental rights—for the Government to spring this evidence on NWF at the hearing and then prevent it from filing counter-evidence. In *Cia. Petrolera Caribe, Inc.* v. *Arco Caribbean, Inc.*, 754 F.2d 404, 410 (1st Cir. 1985), a case directly on point, the First Circuit held that while the trial court had discretion to admit supplemental affidavits, it abused its discretion in allowing one party to submit supplemental affidavits on the day of the hearing while denying the same opportunity to the other.

Second, the District Court itself invited additional submissions. It is quite true that the court referred to supplemental "memoranda," ER 227-28; *see also* ER 110, but in light of the fluid state of the record, with the Government filing data even at the hearing itself, it was not unreasonable, particularly in light of the law in the Circuit, to interpret this order as permitting the submission of additional affidavits.

Although a District Court does have, under Fed. R. Civ. P. 56, "'a measure of discretion in determining whether [a] summary judgment motion is ripe for resolu-

[29] The Government's exhibit, reproduced as Appendix B to this brief, was marked as Federal Exhibit 1 and made a part of the record. ER 228. The Government wrote counsel for NWF under date of July 22, 1988: "As directed by the Court, I am providing you with a copy of the exhibit submitted to the court by the Government on July 22, 1988"—that is, that same day.

tion,'"[30] that discretion also can be abused.[31] Here, NWF's affidavits were not out of time in light of the Government's own filing that was itself out of time.

3. There are here no "special and important reasons" for this Court to review the Court of Appeals' treatment of the particular circumstances under which the District Court refused to consider supplemental affidavits in support of standing. *See* Sup. Ct. R. 10.

It has been this Court's longstanding practice to dismiss certiorari when it becomes apparent that the case turns upon review of a question which "would be of no importance save to the litigants themselves."[32] This case depends solely on the scope of a trial court's authority under particular factual circumstances and under D.C. Circuit practice. The decision below was expressly based on the "equities of this case." Pet. App. 21a. In reaching that decision, the Circuit Court considered the Government's opportunity to refute the supplemental affidavits and the fact that prior to the trial court's request for supplemental memoranda, NWF had no reason to doubt the adequacy of the affidavits it had already submitted. To review the Court of Appeals' decision, this Court would first have to revisit these issues and thereby decide questions that are of interest only to the parties to this litigation.

[30] *Childers* v. *Joseph*, 842 F.2d 689, 693-694 n.3 (3d Cir. 1988), quoting *Sames* v. *Gable*, 732 F.2d 49, 51 (3d Cir. 1984).

[31] *Glen Eden Hosp.* v. *Blue Cross & Blue Shield*, 740 F.2d 423, 428 (6th Cir. 1984); *Sam Wong & Son, Inc.*, v. *New York Merc. Exch.*, 735 F.2d 653, 678 (2d Cir. 1984); *Sames*, 732 F.2d at 51-52.

[32] *Rudolph* v. *United States*, 370 U.S. 269, 270 (1962). Thus, the Court has dismissed certiorari when it appeared that rather than presenting a constitutional issue, the case turned on "the discretion which the trial court was entitled to exercise." *Moor* v. *Texas & N.O. R.R.*, 297 U.S. 101, 105 (1936); *cf. Rudolph*, 370 U.S. at 270 (dismissing certiorari where case turned on Court of Appeals' findings of ultimate fact); *Southern Power Co.* v. *North Carolina Pub. Serv. Co.*, 263 U.S. 508, 509 (1924) (dismissing certiorari where the controverted question was primarily a question of fact).

A dismissal of the writ would be particularly appropriate in this case, where the Government seeks no reversal of established law, or of such cases as *SCRAP*. Nor does it ask the Court to promulgate a new rule or a new approach in regard to standing. It merely questions the application of controlling law to the particular facts of this case.

Although "law of the case"—the Court of Appeals' second ground of reversal—may not technically apply at this stage of the proceeding because this Court remains free to determine standing for itself, there is a large element of potential unfairness at play here. On a number of occasions prior to the July 22, 1988 hearing, the courts below either specifically held that NWF had standing or assumed that it did.[33] When the Government attempted to take discovery on the issue, NWF opposed it solely on the ground that it had already submitted sufficient evidence on standing, and the District Court agreed. Pet. App. 170a. If the District Court had thought standing was a live issue, it would have permitted discovery. NWF filed the additional affidavits as soon as it learned at the

[33] For example, the Government originally challenged standing only in regard to a single count in the amended complaint. *See* Pet. App. 130a. Later, on February 10, 1986, the District Court, in denying a Government motion to reconsider the entry of a preliminary injunction, "reaffirm[ed] plaintiff's standing to bring this action." Pet. App. 140a. On July 14, 1986, the District Court quashed Government subpoenas designed to test some aspects of NWF's standing. Pet. App. 170a. And on December 11, 1987 (as amended, December 15, 1987), the Court of Appeals specifically held that NWF had standing because the Peterson affidavit demonstrated irreparable harm to NWF. Pet. App. 38a, 48a-57a.

July 22 hearing that the District Court was seriously questioning standing for the first time.[34]

In summary, the petition should be dismissed as improvidently granted because a separate, alternative ground for the ruling below is peculiarly one for a lower court to decide and to which this Court should pay deference. In the alternative, the Court should affirm the decision below as a correct application of general law to the facts of this case.

4. No harm will come to federal interests from such a dismissal or affirmance on this alternative ground. Both in its facts and in its argument, the Government leads this Court to believe that irreparable injury will befall such interests if the decision below is not reversed. In fact, no injury of any kind to federal interests will follow.[35] The injunction originally issued by the District Court is no longer in effect, *see* Pet. App. 24a-25a, 158a, and the efficacy of that injunction is not before the Court. The Government is free to pursue—and, in fact, is pursuing—its Program of terminations, and federal lands continue to be opened to mining and other commercial interests. A remand for a trial on the merits would not in any way disturb the status quo; it would only allow the District Court to determine, finally, whether the Govevrment has violated and is continuing to violate the law in its Land Withdrawal Review Program, or whether that Program can proceed apace.

The District Court on remand does *not*, as the Government says, have to become involved in hundreds of in-

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[34] In fact, it is not too late for the Government to pursue discovery now, if the Court were to find it necessary to remand the case. *Cf. Wilderness Soc'y* v. *Griles*, 824 F.2d at 20-21.

[35] Moreover, we would respectfully remind the Court that standing "in no way depends on the merits of the [claim]." *ASARCO, Inc.* v. *Kadish*, 109 S. Ct. 2037, 2049 (1989), quoting *Warth*, 422 U.S. at 500.

dividual decisions. NWF is not challenging these decisions individually. The terminations were all completed pursuant to what the Government itself, time and again, has denominated as a single "Program." [36] The Court of Appeals held that it was a single Program. Pet. App. 55a-56a. It is this Program, not the individual orders, that NWF is challenging.

NWF simply seeks to reinstate prior agency decisions until the statutorily-mandated procedure has been followed. For example, if, as NWF contends and as the District Court held, Pet. App. 132a, FLPMA mandates RMPs as a matter of law precisely because of the additional information and findings, including EISs, required in RMPs, the District Court need never decide whether some other form of documentation met some unprescribed "equivalency" test.[37] Similarly, the District Court need only decide whether the Act requires that Congress and the President be notified before a program of terminations goes into effect, because clearly no such notification took place here. And further, the District Court must decide whether the Act requires public notice of, and the opportunity for participation in, the Program, and whether those requirements were met—not as to each parcel of land but for the Program as a whole. As the

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[36] Pl. Exs. 1, 2, 3, 11, 17, 20, 70; 1B Edwards Aff. Ex. 21B; 1C Edward Aff. Ex. 8, JA 51.

[37] Moreover, this record shows that MFPs do *not* set forth all of the information contained in RMPs. JA 193-194. In fact, the inadequacy of MFPs is established by the Government's own reports: *e.g.*, General Accounting Office Report, *The Bureau of Land Management's Efforts to Identify Land for Disposal* (April 18, 1985), at 15; Office of Technology Assessment, *Environmental Protection in the Federal Coal Leasing Program* (1984), at 44, 56, 70, 72, 74-75, 78; General Accounting Office, *Minerals Management at the Department of the Interior Needs Coordination and Organization* (EMD 81-53, June 5, 1981), at 56; American Society of Planning Officials, *Improving the Bureau of Land Management Planning Process* (May 1979), at 5-7, 8-13, 26.

District Court put it in 1985: NWF seeks to enforce "full compliance with the laws governing management of the public lands." Pet. App. 144a.

These are purely legal decisions, followed by narrow and relatively simple factual conclusions.[38] Even the Acting Solicitor General concedes that a federal court may "articulate a ratio decidendi that would have precedential implications for similar disputes." Ptrs. Br. 35. That is precisely what we seek here. There is nothing site-specific about the legal rulings being sought. Nor are they appropriate for decision now, but only after remand. The situation is thus comparable to that in *International Union* v. *Brock*, 477 U.S. 247, 287 (1986), where this Court found that the Secretary of Labor and the Court of Appeals had both misconstrued petitioners' claims:

> Neither these claims nor the relief sought required the District Court to consider the individual circumstances of any aggrieved UAW member. The suit raises a pure question of law: whether the Secretary properly interpreted the Trade Act's TRA eligibility provisions. [39]

For similar reasons, NWF need not demonstrate on remand that its members have standing in *each* of the areas covered by each classification and withdrawal termination. Such a result would run directly counter to this

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[38] The Government conceded to the District Court that "the same procedures" were used throughout the 17 states, ER 208, and that court held in 1985 that "The essence of plaintiff's claim is legal: The exercise of agency discretion and expertise and the development of a factual record would not be helpful or necessary to decide this legal issue." Pet. App. 142a. The legal issue remains the same today.

[39] For other examples of programmatic attacks, see *Watt* v. *Energy Action Found.*, 454 U.S. 151; *FCC* v. *WNCN Listeners Guild*, 450 U.S. 582 (1981); *Kleppe* v. *Sierra Club*, 427 U.S. 390 (1976); *Association of Data Processing Serv. Orgs.* v. *Camp*, 397 U.S. 150 (1970).

Court's decisions.[40] Since NWF attacks the Program, and one or more of its members has been injured in a site where the Program is being carried out, that is all that will be required.

II. ALTERNATIVELY, NWF HAS STANDING IN ITS REPRESENTATIONAL CAPACITY

Even if the Court were to disagree with the analysis above, NWF has standing in this case, and the judgment below should be affirmed on that basis.

The Argument portion of the Government's brief reads as though Peterson is the plaintiff/respondent here. To the contrary, the plaintiff/respondent—the party whose standing is at issue—is NWF. As an association, NWF can have standing on either a representational basis, or on its own. *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343, 345 (1977); *Warth*, 422 U.S. at 511. Here, NWF has both.

The Court of Appeals correctly held, Pet. App. 19a, that the first Peterson affidavit alone was sufficient to support the representational standing of NWF, which need only show that any one of its members is suffering injury.[41] Other evidence—specifically, the Erman affidavit, Pet. App. 187a, read together with the Government's own submissions—further proves NWF's standing.

An association can sue in a representational capacity on behalf of its members so long as its members would

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[40] *E.g.*, *Brock*, 477 U.S. at 281-287; *Warth*, 422 U.S. at 490; *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 206, 209-212 (1972); *Sierra Club* v. *Morton*, 405 U.S. at 737, 740 n.15.

[41] *Bowen* v. *Kendrick*, 108 S. Ct. 2562, 2580 n.15 (1988); *Watt* v. *Energy Action Educ. Found.*, 454 U.S. at 160; *Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 264 & n.9 (1977); *Buckley* v. *Valeo*, 424 U.S. 1, 12 (1976); *Warth*, 422 U.S. at 511 (an "association must allege that its members, or any one of them, are suffering immediate or threatened injury"); *Baker* v. *Carr*, 369 U.S. 186, 204 n.23 (1962).

otherwise have standing to sue, the interests it seeks to protect are germane to the association's purposes, and the participation of individual members is not required. *Brock*, 477 U.S. at 281-282, 286-288; *Hunt*, 432 U.S. at 343; *Warth*, 422 U.S. at 511.

There can be no question but that the last two of these requirements have been met, and the Government does not argue otherwise.[42] Therefore, the sole issue on representational standing is whether this record sufficiently shows that one or more NWF members have standing—that is, whether NWF has demonstrated that a single member is suffering a personal injury fairly traceable to the Government's challenged conduct.[43] Here, this injury has been shown by both Peterson and Erman.

A. The Peterson affidavit.

The Government attempts to isolate the Peterson affidavit from all other evidence in the case and then selectively cites only a few phrases from it. But that is not how standing is determined, particularly at the summary judgment stage. As this Court has admonished, the entire

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[42] The interests NWF was founded and chartered to protect—the public interest in safeguarding wildlife habitats and in protecting the recreational value and aesthetic beauty of federal lands from desecration—are precisely the ones at issue here. In addition, a cornerstone of NWF's representational activity is to gather and disseminate the very information the Government has failed to create. Finally, the District Court did not rule, and the Government does not claim, that NWF's 4.5 million members and supporters are necessary parties to this suit.

[43] The injury must also be redressable by the relief sought. That requirement is not in question here. If the District Court ultimately rules in favor of NWF, its order will largely remedy the harm already done to NWF and its members, obviate the harm that still threatens them, and provide NWF with participation and with the information it needs to carry out its legitimate functions. *See Public Citizen* v. *U.S. Dep't of Justice*, 109 S. Ct. 2558, 2564 (1989).

record must be considered. *Celotex Corp.* 477 U.S. at 324; *see also Gladstone, Realtors*, 441 U.S. at 109 n.22; Fed. R. Civ P. 56(c). In this case, the Peterson affidavit was sufficient but, in addition, the Government itself proved through its own submissions that Peterson and other NWF members enjoy standing.

The Peterson affidavit, Pet. App. 190a, specifically referred to the instant lawsuit, which Peterson correctly described as having been brought to contest the "unlawful terminat[ion of] protective land use classifications and other withdrawals on federal lands pursuant to [the Government's] Land Withdrawal Review Program." Par. 5. Peterson alleged that her interests had been adversely affected by these "unlawful actions," par. 6, and thus made clear that the events and the harm described in her affidavit related to the Government's terminations—that is, that the lands affected by such terminations were the lands about which she was complaining. She pointed out, for example, that before terminating withdrawals and classifications, the Government had failed to provide notice and opportunity for public involvement, thereby depriving her of the opportunity to participate in management decisions, as she had done with the draft Lander, Wyoming RMP. Pars. 4, 8.[44]

Peterson's affidavit demonstrates that it was not simply as a member of the general public that she was harmed. Instead, Peterson actually used these lands for recreational purposes and enjoyed their aesthetics. Par. 3. Peterson asserted that her "recreational use and aesthetic enjoyment" depended upon management and enhancement by the Government, par. 4, and had therefore been adversely affected by the Government's unlawful actions. Par. 6.[45] These adverse effects, she said, would be redressed by a favorable decision in the case. Par. 9.

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[44] *See* n.56, *infra*.

[45] Parties have standing to protect not only their economic interests but their aesthetic, conservational and recreational interests

Peterson then gave a specific example of adverse impact—an example that placed her squarely within the area affected. She alleged that she particularly used lands in the vicinity of South Pass-Green Mountain, Wyoming, an area the Government has "opened to the staking of mining claims and oil and gas leasing." Par. 6. This opening, she claimed, "threatens the aesthetic beauty and wildlife habitat potential of these lands," *id.*,—the very characteristics on which her enjoyment of the land depended.

The Government has totally confused the situation in regard to the South Pass-Green Mountain areas by its repeated references to two million acres. *E.g.*, Ptrs. Br. 30, 33, 35. Its own evidence demonstrates that it had previously designated for retention as public lands some two million acres in Fremont and Natrona Counties, Wyoming *before* the terminations began. (These two million acres included lands in the South Pass and Green Mountain areas as well as other lands.) However, the Government *closed* only about 6000 of the two million acres to mining and mineral leasing. These 6000 acres were in the South Pass-Green Mountains areas. The Government thereafter terminated—or opened to mining and to oil and gas development—4455 *of the 6000 acres.* Def.-Int. Ex. 7, p. 2; JA 132-133.

In this context, it is clear that Peterson was referring to the 4455 acres when she swore that she used the South Pass-Green Mountain areas and was injured by the unlawful terminations. Her affidavit directly tied her to the unlawful "terminating," par. 5, to the Government's proposal "to terminate classifications and other withdrawals," par. 8, and to the Government's failure to "pre-

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as well. *Havens Realty Corp.*, 455 U.S. at 379 & n.20; *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 486 (1982); *Duke Power Co.* v. *Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 73-74 & n.18 (1978); *SCRAP*, 412 U.S. at 687; *Camp*, 397 U.S. at 154.

serv[e] and protect[]" these particular federal lands. Pars. 4, 7, 8, 9. She further referred to the South Pass-Green Mountain area "opened" to mining, par. 6, which can *only* mean the 4455 acres—the area opened to mining.

The Government makes too much of Peterson's allegation that she recreated "in the vicinity of" the South Pass and Green Mountain areas.

First, a specific pass is named "South Pass" and a specific mountain is called "Green Mountain", but the lands at issue here are those surrounding, or in the vicinity of, these particular spots, as the Government's own evidence shows. *E.g.*, JA 124. Peterson was not attempting to locate herself in the bottom of the pass or on top of the mountain, so it is not surprising that she would designate the affected lands which she uses as "in the vicinity of" these particularized places.

The Government can hardly feign confusion over what these lands are, or contend that they have not been impacted by terminations. In response to NWF's request for the Administrative Record of Classifications and Withdrawals, the Government produced on November 4, 1985, case file No. W6228, the file on the South Pass-Green Mountain area. JA 132. Government affidavits and exhibits speak repeatedly of the South Pass and Green Mountain areas,[46] or "the Green Mountain-South Pass area." *E.g.*, JA 137. According to the Government, the South Pass area is "an important recreation area" where people come to fish, hunt and camp, JA 124, and the Green Mountain area is "noteworthy" for, among other things, its deer, elk herds and recreation. *Id.* The Government's evidence is replete with references to potential adverse impacts on campgrounds, fish, and wild-

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[46] One Government affiant not only described these areas, JA 123-124, but recited how the decisions were made to revoke withdrawals and classifications on them because of uranium and mining interests. *E.g.*, JA 132-137.

life habitats in these areas, as well as on visual or scenic resources there.[47]

Second, the harm that comes from mining—whether it be for oil, gas, uranium, silver, gold, copper, zinc or agate—is not localized. Landscapes are obscured for great distances; fugitive dust is created and goes where the wind goes; contaminated water flows for miles; blasting violates noise levels, causes wildlife to move, and affects wildlife mating habits over great distances; and cyanide poured over heap leach piles after strip-mining kills fish far downstream.[48] So even if Peterson's affidavit were

[47] *E.g.*, JA 133-134, 136-137; Pl. Ex. 61 at 228; Def.-Int. Ex. 7; *see also* ER 193.

[48] One EIS published by the Government in 1988 spent 15 pages discussing the cumulative impacts of oil and gas development on public lands. U.S. Dept. of the Int., BLM, Final West HiLine Resource Management Plan Environmental Impact Statement (1988), at A-41–A-55. This document demonstrated that, among other things, air quality is affected by the creation of dust, the emissions from internal combustion engines, and the burning of waste petroleum products, *id.* at A-41; soils are affected by surface disturbances, soil compaction, and the spilling of fluids, including oil and salt water, *id.* at A-42–A-43; surface water quality is impacted by erosion, sedimentation, and accidental spills, while ground water is affected by seismic exploration, causing cross contamination of aquifers, reduced water yields, and lowered static water levels, *id.* at A-43–A-44; vegetation is destroyed by the construction of seismograph trails, drainage crossings, drill pods, roads, pipelines and other facilities, *id.* at A-45–A-46; livestock grazing is impacted by a loss of forage, *id.* at A-46; big game, upland game birds, waterfowl, small animals, endangered species, and fisheries are all threatened by everything from loss of forage, the disturbance of breeding cycles through drilling, the destruction of food by oil spills and of nests by drilling, to the release of toxic substances into water, *id.* at A-46–A-49 ("All stages of oil and gas operations directly affect wildlife"); recreation such as hunting, fishing, sightseeing, hiking, camping and boating, as well as aesthetics, are affected by dust, noise, noxious fumes, new roads, erosion, the destruction of cultural resources and natural settings, and the disturbance to wildlife, *id.* at A-49–A-51; and wilderness values are adversely impacted by seismic exploration, *id.* at A-52.

interpreted to aver injury-in-fact to a person recreating in the "vicinity" of lands being opened to desecration, that would be entirely appropriate.[49]

This Court has not heretofore had difficulty construing phrases like "in the vicinity of" in standing cases—particularly in the environmental context.[50] For example,

[49] This is particularly true in light of the District Court's holding in 1985 that any allowance of mining or leasing

> can permanently destroy wildlife habitat, air and water quality, natural beauty and other environmental values. [The Government's] suggestion that [NWF's] members can still hike, fish and otherwise enjoy these lands ignores both aesthetic interests and the process whereby a holder of a mining claim can gain the right to exclusive possession. Similarly, [the Government's] calculations limiting the acres that have actually been leased or mined demonstrates nothing about the future impact of their actions. Without the preliminary injunction, [the Government's] termination of classifications and withdrawals could lead to the permanent loss of lands to public use and enjoyment—an injury we feel would be irreparable. [Pet. App. 135a (footnote deleted).]

[50] The lower courts have also treated "in the vicinity of" as sufficient for standing purposes in environmental cases. For example, in *Concerned About Trident* v. *Rumsfeld*, 555 F.2d 817, 823 n.10 (D.C. Cir. 1976), the court upheld a District Court finding that a party who owned land "in the vicinity of" a submarine support facility had standing to challenge construction at the facility. And in *Coalition for the Env't* v. *Volpe*, 504 F.2d 156, 163-164 (8th Cir. 1974), the court held that plaintiffs who lived "in the immediate vicinity of" a proposed development project had standing to contest the project, treating as sufficient the allegation that individual and member plaintiffs "reside, work, or pass by the vicinity of the project." *See also Committee for Consideration of Jones Falls Sewage Sys.* v. *Train*, 539 F.2d 1006, 1015 (4th Cir. 1978) (Butzner, J., dissenting on an issue not reached by the majority). *See also Natural Resources Defense Council, Inc.* v. *Outboard Marine Corp.*, 692 F. Supp. 801, 807 (N.D. Ill. 1988) (plaintiffs residing "in the vicinity of Lake Michigan, Waukegan Harbor and the North Ditch" had standing to contest defendant company's discharges into waters); *Sierra Club* v. *Mason*, 351 F. Supp. 419, 423 (D. Conn. 1972) (Sierra Club members residing "in the vicinity of" a part of

in *Duke Power Co.*, 438 U.S. at 67, some 40 individuals in "close proximity" to a planned power plant were deemed to have standing to challenge the plant's construction. The "environmental and aesthetic consequences" of thermal pollution of two lakes "in the vicinity of" the plaintiffs satisfied the injury-in-fact test. *Id.* at 73-74. And in *SCRAP*, 412 U.S. at 678, a plaintiff who alleged that he used resources "surrounding" the areas where the harm occurred was held to have standing.[51]

Thus, the Peterson affidavit does not require "presumptions" to support standing.[52] Read in its entirety, and particularly in light of the Government's own evidence, it shows that Peterson recreated in an area that was opened to mining without the statutory prerequisites of, *inter alia*, RMPs, prior EISs, and public participation, and that Peterson has thereby been—and continues to be—injured.[53]

Long Island Sound had standing to protest a dredging operation that dumped materials into the Sound).

[51] Although the Court's opinion in *SCRAP* referred to members using resources "in," "of" and "from" the Washington Metropolitan Area, 412 U.S. at 685, 687, 688, the complaint in the case alleged only that the members used the resources "surrounding" that area and at their legal residences—namely, New Haven, Atlanta and Milo, Maine. *See id.* at 678; SCRAP Joint App. at 9. The Court obviously considered "in" and "surrounding" interchangeable terms for purposes of standing.

[52] The Government has misstated the Circuit Court's holding in this regard. Rather than applying "free-floating presumptions," as the Government claims, Ptrs. Br. 31, the court merely interpreted Peterson's use of the phrase "in the vicinity of" in the context of her entire affidavit. Significantly, the Government does not challenge Peterson's credibility, veracity, or accuracy.

[53] For example, a properly-prepared EIS would have contained at least: (1) a description of the purpose and need for withdrawal and classification terminations; (2) a description of alternatives to the proposed terminations; (3) a description of the lands affected; and (4) a description of the environmental consequences of each

The Government relies heavily on *FW/PBS, Inc.* v. *Dallas*, 110 S. Ct. 596 (1990). Ptrs. Br. 24-25, 29, 31-33 & n.24, 38-39 n.28, 42 n.32. In that case, the statute denied licenses to applicants with former convictions (but only for a specific disability period), and to applicants living with persons whose licenses had been revoked. No one had alleged, much less offered proof, that he or she had been convicted within the disability period or that he or she lived with any one whose license had been revoked. Therefore, there was no standing. 110 S. Ct. at 607-609. Nor was the situation saved by an apparent concession by counsel for the city at oral argument or by an affidavit introduced for the first time in this Court, because the information was not part of the record below. *Id.* at 609-610. That case has no application here. NWF is not relying on evidence submitted for the first time in this Court, and no essential allegation, or evidence in regard thereto, is missing from the record below.[54]

The injury to Peterson's use and enjoyment of lands in the South Pass and Green Mountain area is substantial. In fact, at oral argument before the District Court,

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alternative, including, but not limited to, the proposed terminations. 40 C.F.R. §§ 1502.10, .13, .14-.16. (1989)

Properly-prepared land use plans would have included a detailed discussion of "the physical, biological, economic and social effects" of implementing each termination. 43 C.F.R. § 1610.4-6.

The failure of the Government to create these documents prevented both Peterson and NWF from meaningful participation in, and knowledge of, the Program and the resulting terminations.

[54] The Government also relies on *Bender* v. *Williamsport Area School Dist.*, 475 U.S. 534 (1986), Ptrs. Br. 29, 32 n.22, but that case merely stands for the well-established proposition that jurisdiction must be shown by the record, and not by briefs or arguments. In that case, the Court refused to grant standing to a parent who stated at oral argument that he was opposed to prayer on school premises during school hours; there was nothing in the record showing this person's status as a parent or what injury he or his children had suffered. 475 U.S. at 545-547. The situation here is not even remotely comparable.

the Government conceded that some of the Green Mountain area has been opened to uranium mining. ER 194. And although there is no transcript, Judge Williams in dissent on the injunction recited that intervening defendant Mountain States Legal Foundation had conceded in oral argument before the Court of Appeals the existence of changes in mining status of lands described by "the Wyoming NWF member" (Peterson). Pet. App. at 90a n.2.

The record is replete with additional evidence of the impact of the Program on these lands. A Government Mineral Report in 1982 concluded that the Green Mountain area contained accumulations of oil and gas and probably contained uranium deposits as well, Def.-Int. Ex. 7; 43 C.F.R. § 3100.1(1); its geologist concluded in the same year that there was interest in gold mining in the South Pass area, Def.-Int. Ex. 7; on the day these lands were opened, 199 mining claims were staked, *id.*; and prior to the District Court's injunction, 406 mining claims had been staked there and four mines had begun surface disturbing activities.[55] The same Mineral Report declared that underground mining "could have an adverse impact on the crucial moose habitat, deer habitat, some elk habitat, and a variety of small game and bird species"; that "[i]mprovements at campgrounds, as well as land *in the immediate vicinity*," could either be damaged or destroyed; and that surface disturbances would be even "more extensive." Def.-Int. Ex. 7 (emphasis added); *see also* 49 Fed. Reg. 19,904 (1984).

The environmental injury to the South Pass-Green Mountain area is established by other parts of the record

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[55] JA 119. At the hearing before the District Court on July 22, 1988, counsel for NWF said she had just learned that U.S. Energy Corporation was seeking to develop a uranium mine on part of this same land. Ct. App. JA at 259. Peterson's subsequent affidavit confirmed that such a mine permit had been filed. Oppcert. App. 16-17, pars. 7-9.

as well. Under both the draft EIS, which was completed belatedly in the fall of 1985 (almost a year and a half after the South Pass-Green Mountain area had been opened, JA 119), and the final EIS, completed in July of 1986 (over two years after the opening), the Government recognized the substantial harm to wildlife and recreation that could occur in the South Pass-Green Mountain areas.[56] For example, the draft EIS concluded that in the Green Mountain area, "significant long-term impacts to elk and mule deer herds could occur from habitat losses caused by oil and gas activities over the next 60 years," Kelly Aff. Ex. 15 at 226; uranium exploration and development in this area "might cause significant losses of critical winter and winter/yearlong elk and mule deer ranges," *id.* at 228; and "[e]lk and trout populations might be lost entirely." *Id.; see also id.* at 230.

As for the South Pass area, "significant acreages of lodgepole pine forest and aspen conifer woodland habitat types could be disturbed, which would cause significant long-term impacts to moose and elk," *id.* at 227; "[i]f gold mining activities continue to erode, these high-value habitats, trout fisheries, the Lander moose herd, the beaver point ecosystems, and the populations of many other wildlife species would suffer significant cumulative negative effects," *id.* at 228; and "[s]ignificant long-term impacts could occur to * * * trout and moose habitat[s in this area.]" *Id.* at 230; *see also* Pl. Ex. 61. These are not allegations in the complaint; this is the Government speaking. These are the very same areas where Peterson recreates.

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[56] Kelly Aff. Ex. 15. Both the draft and final EISs were for the Lander Resource Area, which includes both the South Pass and Green Mountain "management units." The 1982 South Pass and Green Mountain EA concluded that "[t]here would be extensive short term adverse environmental impacts that would occur during the [mineral] exploration phase * * *." Kelly Aff. Ex. 1. Still the Government completed no EIS *before* opening these lands to mining.

B. The Erman affidavit.

Like the Peterson affidavit, the Erman affidavit demonstrates that an NWF member suffered significant injury as a direct result of the Government's Program. Pet. App. 187a. Erman, who lives in Phoenix, Arizona, alleged that he uses federal lands—including those in the vicinity of the Grand Canyon National Forest—for recreational purposes and aesthetic enjoyment. Par. 3. He, like Peterson, wanted to participate in decisions affecting these lands, just as he had joined in comments on the plans involving the Tonto National Forest, the Coconino National Forest, and the Lower Gila. Par. 4. The Government failed, however, to provide notice and opportunities for public involvement. Par. 8.

Erman particularly cited the Arizona Strip as having been opened to the staking of mining claims, which in turn "threatens the aesthetic beauty and wildlife habitat potential of these lands." Par. 6. The Government concedes in its own evidence that there is a discrete area north of the Colorado River in Arizona known as the Arizona Strip, JA 120, and that some of the lands[57] in the Strip have been opened to mining since 1981.[58] That

[57] According to the *Federal Register*, the following acreages in the Arizona Strip were opened to disposal or mineral development in 1981: Public Land Order (PLO) 5805, 46 Fed. Reg. 2,048 (1981), opened 23,041.12 acres to all forms of mining and disposal; PLO 5976, 46 Fed. Reg. 35,504 (1981), as amended by 47 Fed. Reg. 27,288 (1982), opened 225,480 acres to nonmetalliferous mining and disposal; and Classification A 1351, 46 Fed. Reg. 49,650 (1981), opened 1,307,667 acres to disposal, of which 8,219 acres were opened to all forms of mining. Thus, in 1981, protective withdrawals or classifications were terminated and lands made available for private acquisition for approximately 1.5 million acres, and over 250,000 acres were opened specifically to mining.

[58] JA 110, 122. The Government's affiant asserted that this opening "in our opinion" is likely to have little effect because the lands "do not contain any nonmetalliferous mineral that can be economically mined." A Government videotape, introduced along with the Lamb affidavit, JA 120, indicates that these lands contain rich

Erman's fears are well justified is attested to by the fact that 669 mining claims were staked in this area even between the time the terminations began and the injunction was issued. JA 77. And Judge Williams, in dissent below on the now-vacated preliminary injunction, stated that the Government had conceded in oral argument that "some of the acreage opened to mining was in the vicinity of lands used by one of [NWF's] members in Arizona." Pet. App. 90a; *see also id.* at 55a, 85a.

Even based solely on the Erman and Peterson affidavits, standing in this case is less problematic than it was in *SCRAP*. The plaintiffs there merely alleged that they used natural resources surrounding the Washington Metropolitan area and their widely-scattered legal residences, and that higher freight rates would increase pollution and thereby harm the plaintiffs' use of these areas. The Court held that the plaintiffs were in sufficiently close proximity to the alleged harm to deserve standing,[59] and that these allegations distinguished the plaintiffs from other citizens who did *not* use these natural resources. *SCRAP*, 412 U.S. at 685, 687, 689. Here, Peterson and Erman have sworn that opening to mining claims the very lands they use for recreational and aesthetic enjoyment threatens the aesthetic beauty and wildlife habitat potential of those lands. This injury is direct, obvious, concrete, and specific.

deposits of bentonite, a non-metalliferous material extracted by open pit operations. Moreover, the Government's evidence shows that a large number of mining claims have been staked on this property in recent years. JA [redacted] 77

In any event, the affiant's opinion is just that—pure opinion, subject to proof at trial—and in no way affects the issue of standing to test that opinion.

[59] No Justice disagreed with this conclusion. Justice White, joined by Chief Justice Burger and Justice Rehnquist, dissented because, in their view, the causal link between higher rates and environmental harm was too attenuated. *SCRAP*, 412 U.S. at 722-724.

If the Government had acted lawfully, the terminations in all likelihood would never have taken place, because the RMPs, which necessarily contain EISs, would have demonstrated that the harm to environmental resources far outweighed any mining or other interests.[60] But RMPs and EISs, if prepared at all, were completed *after* terminations had been effected—too late for NWF and its members effectively to participate in the planning process and too late to allow them to demonstrate the full, adverse environmental impact.[61]

The Government contends that granting standing in this case will somehow result in a head-on confrontation between the judiciary and the other two branches of Government, and that a trial would require the District Court to review records relating to hundreds of individual land decisions. Ptrs. Br. 36-37. Nothing could be wider of the mark.

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[60] NWF's contentions about the Government's failures to abide by its statutory duties are substantial. The District Court found in 1985 that "The Government never published its proposed decisions, as required by 43 C.F.R. § 2461.2," Pet. App. 141a; the notices it did publish in the Federal Register did not indicate whether EISs were prepared, whether land use plans supported the action, or whether the action had been sent to the President and Congress for review, *id.*; "FLPMA requires the President to transmit to the President of the Senate and the Speaker of the House the [Interior] Secretary's recommendations for withdrawal revocations," *id.* at 124a; FLPMA directs the Secretary to divulge land use plans, and yet, "as plaintiff alleges and defendants do not deny, defendants have completed only a fratcion of the land use plans for these areas," *id.* at 131a; "[d]efendants' reliance on [MFPs] is misplaced and does not satisfy the statutory expectations of 'land use plans,'" *id.* at 132a; Congress "never authorized the vast scale of classifications without land use plans which we see today," *id.*; and "[d]espite the statutory command, defendants have failed to provide for public participation in their withdrawal revocation decisions." *Id.* at 133a.

[61] Thus, this case is wholly unlike cases such as *Kissinger* v. *Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980), where three was no statutory duty to create the documents in the first place.

If the Government has clearly violated the law in failing, *inter alia*, to undertake RMPs and EISs before completing terminations (just as the complaint here alleged), there can surely be no question but that the courts—in a proper case, with a proper plaintiff—can call the Government to account and order it to follow the statutory mandate. That hardly presents a head-on confrontation between branches of Government; instead, the judicial branch is simply carrying out its traditional duty to interpret and enforce the law. That being true, the only issue is one of standing—whether this case has a proper plaintiff.

But if NWF members *use* the lands where terminations are occurring, and the Government's actions have injured them in their recreation on those lands, there must be standing. Alternatively, if one of NWF's very purposes is to gather and disseminate info mation on terminations and their effect on recreation and wildlife, and this purpose has been defeated or threatened because the Government has violated its statutory duty to gather and provide such information, as well as to allow NWF and its members to participate in key decisionmaking, there can once again be no question but that these members, NWF on their behalf, and NWF on its own behalf, all have standing. There is thus no confrontation between branches, as the Government envisages.

In any event, regardless of how NWF's affidavits in this case are viewed, summary judgment was entirely inappropriate.[62] For example, the District Court accepted

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[62] The Government cites *Celotex*, Ptrs. Br. 30 n.21, 41, but that case supports NWF. The Court there approved summary judgment on the merits against a plaintiff who was unable to support her complaint that decedent had been exposed to defendant's products. The Court rejected an argument that the moving party had to produce evidence of its own even though the plaintiff had failed in her proof. However, the Court emphasized that under Rule 56(c), summary judgment is proper only after consideration of the whole record, including pleadings, answers to interrogatories, admissions,

as true the Government's contention that Arizona Strip lands recently opened to mining possessed "no potential for non-metalliferous mining," and this conclusion was used to cast doubt on Erman's contention that he would be injured by the mining in the Strip. Pet. App. 36a. Yet the Government's own evidence shows that these lands had already been open to metalliferous mining, and that after they were opened to non-metalliferous mining in 1982 and prior to the injunction in 1985, 669 claims were filed there, JA 77—a material fact hardly consistent with a finding that the area had "no potential." This is just one example of how the District Court improperly accepted one version of disputed material facts that was wholly at odds with other evidence in the record. *See Liberty Lobby, Inc.*, 477 U.S. at 248-249.

In summary, as the Government implies, Ptrs. Br. 27-28, this Court's decisions on standing have not always been viewed as wholly consistent, one with the other. In cases such as this one, however, the thread that binds them is that at a constitutional minimum, putting aside redressability,[63] Article III requires that a party invoking a court's authority must show that he personally has suffered some actual or threatened injury as a result of the defendant's allegedly illegal conduct. *Allen*, 468 U.S. at 751; *Valley Forge Christian College*, 454 U.S. at 472; *Gladstone, Realtors*, 441 U.S. at 99; *Hunt*, 432 U.S. at 344-345; *Trafficante*, 409 U.S. at 208-212; *Flast*

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and affidavits. 477 U.S. at 323-324. That rule is precisely applicable here. In fact, any ambiguity should have been construed in favor of the non-moving party, NWF. *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

[63] There can be no question here that (a) there is a nexus between the harm suffered and the Government's termination program, and (b) the relief sought will redress the harm, both for the past and prospectively. *See* Pet. App. 120a-121a, 149a; *see also* n.43, *supra*. The facts here thus bear no relation to cases like *Allen* v. *Wright*, 468 U.S. 737 (1984), and *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26 (1976).

v. *Cohen*, 392 U.S. 83, 99 (1968).[64] Thus, all of the Court's cases are reconcilable at least in their underlying theme: a party merely claiming an *interest* in a problem (particularly an interest shared by the general public), or an injury with little nexus to the alleged wrong, does not have standing, because "that concrete adverseness which sharpens the presentation of issues" is absent.[65] On the other hand, if a party can show a particularized harm to himself—a personal stake in the outcome of the suit—and a direct relationship between his injury and the wrong, the issues are joined and there is standing.[66]

Here, NWF has as one of its purposes the monitoring and protection of the nation's natural resources so that its members can use and enjoy those resources. JA 12. The Government has instituted and is in the process of carrying out a huge, single-minded federal Program of opening up these federal lands to mining and other specialized interests. NWF has alleged, and the record shows, that this Program is being carried out illegally—directly contrary to the governing statutory mandate—that its members use these lands, and that the Government's program is harming these members in their recreational and other use of these lands.

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[64] NWF has quite clearly met the "prudential limitations" on standing in the federal courts. *See Valley Forge Christian College*, 454 U.S. at 474-475; *Duke Power Co.*, 438 U.S. at 80; *Warth*, 422 U.S. at 499-500; *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U.S. 208, 221-227 (1974). NWF's injuries fall squarely within the zone of interests protected by NEPA and FLPMA. The Government refers to this "zone of interests" test, but does not argue that it went unsatisfied here. Ptrs. Br. 27 n.20. *See Clarke* v. *Sec. Indus. Ass'n*, 479 U.S. 388, 399-400 (1987).

[65] *Duke Power Co.*, 438 U.S. at 72; *Sierra Club* v. *Morton*, 405 U.S. at 735; *Baker* v. *Carr*, 369 U.S. at 204.

[66] *Franchise Tax Bd. of Calif.* v. *Alcan Aluminum Ltd.*, 110 S. Ct. 661, 664-665 (1990); *Clarke*, 479 U.S. at 402-403; *Havens Realty Corp.*, 455 U.S. at 372-379; *Gladstone, Realtors*, 441 U.S. at 110-115; *Duke Power Co.*, 438 U.S. at 78-81; *Camp*, 397 U.S. at 152.

We submit that even under the most narrow reading of the Court's decisions, NWF has passed the standing test. The entire record, as well as its own affidavits, support its allegations. And if the Court disagrees, the proper remedy is a remand to allow NWF to complete its record, as it surely can, or to allow further discovery.

III. ALTERNATIVELY, THE CASE SHOULD BE REMANDED FOR A DETERMINATION AS TO WHETHER NWF ESTABLISHED STANDING ON ITS OWN ACCOUNT

If the Court were to disagree with both of NWF's first two arguments, this case should be remanded to the Court of Appeals. Because of its ruling that the Peterson affidavit was sufficient to establish NWF's standing, the appellate court never had to reach the issue of whether NWF established standing on its own account by demonstrating injury to the association itself. *See Havens Realty Corp.*, 455 U.S. at 369, 378-379; *Hunt*, 432 U.S. at 343; *Warth*, 422 U.S. at 511. The Court of Appeals should determine that issue in the first instance.

This is hardly a frivolous claim. "Informational injury"—injury resulting from a defendant's refusal or failure to provide information necessary to an association's proper functioning—has been held by the lower courts to constitute injury-in-fact to that association,[67] and this Court's decisions in such cases as *Havens Realty Corp.*, 455 U.S. at 379, and *Public Citizen*, 109 S. Ct. at 2563-64, are to the same effect.

In this case, informational injury has two aspects. First, as noted above, federal statutes specifically *require*

[67] *E.g., National Wildlife Fed'n*, 839 F.2d at 712; *Action Alliance of Senior Citizens* v. *Heckler*, 789 F.2d 931, 937-939 (D.C. Cir. 1986); *Munoz-Mendoza* v. *Pierce*, 711 F.2d 421, 428 (1st Cir. 1983); *Cady* v. *Morton*, 527 F.2d 786, 790 (9th Cir. 1975); *Scientists' Inst. for Pub. Information, Inc.* v. *Atomic Energy Comm'n*, 481 F.2d 1079, 1087 n.29 (D.C. Cir. 1973); *National Org. for the Reform of Marijuana Laws (NORML)* v. *United States Dep't of State*, 452 F. Supp. 1226, 1230 (D.D.C. 1978).

the Government to publish FLPMA regulations, formulate RMPs and EISs, and include the public in agency decision-making. The complaint alleged that these procedures were not followed and that NWF has thereby been injured by its inability to provide information to its members about terminations and to participate in the decision-making process on those terminations. JA 12, par. 6; 19, par. 38; 20-21, pars. 40-41, 43-46. The Greenwalt affidavit gives specific examples of NWF's education program, its advocacy of improvements in controls over federal lands, and its monitoring of federal land laws, and alleges that NWF and its members, who contribute financially in part to obtain information on these issues, have been injured by the Government's failure to provide adequate information and opportunities for public participation. Pet. App. 193a-194a. Thus, not only has NWF been damaged by its inability to perform the very functions it was created to carry out, but it will be financially harmed if it cannot provide the information for which its members contribute money.[68]

[68] This is a far more direct and less problematical harm than that held sufficient in *Hunt*, where the North Carolina statute might have resulted in a contraction of the apple market in Washington State, which in turn might have caused a reduction in assessments paid to the plaintiff Commission. *Hunt*, 432 U.S. at 345. Nevertheless, the Commission's standing was upheld. *Id.* at 341-345.

The injury to NWF is also more specific and identifiable than that to the Village of Bellwood in *Gladstone, Realtors*, where the village's sole complaint was that it had been injured "by having the housing market in such village wrongfully and illegally manipulated to the economic and social detriment of the citizens of such village." Joint App., *Gladstone, Realtors* at 99, par. 12. The village's standing was upheld. *Gladstone, Realtors*, 441 U.S. at 109-111.

In *Public Citizen*, 109 S. Ct. at 2563, the Court found that the plaintiff organizations had standing even though all they sought was an opportunity to monitor the meetings of an ABA committee and participate effectively in the judicial selection process of that committee.

NWF's purposes here are thus quite akin to those that supported standing for the Washington Legal Foundation and Public Citizen in *Public Citizen*, 109 S. Ct. at 2563-64. NWF is "attempting to compel" the Government "to comply with" the law in part so that it can "monitor [the Government's] workings and participate more effectively in the * * * process." *Id.* at 2563.

Second, it would be ironic indeed—and a miscarriage of justice—if the complaint and the Greenwalt affidavit were somehow deemed lacking in specificity. The Government, by the very act of violating the governing statutes and regulations and by refusing to produce information that Congress has commanded it to make public, would thereby have defeated a challenge to its legal authority. The complaint and affidavit would be deemed to contain too little information precisely *because* the Government refused to create it, which in turn is the very illegal act being challenged in the lawsuit.

The informational and educational role played by NWF is not one carried out by the public at large; it is a role unique to this organization and to a few others like it. The "public" does not gather, assimilate, critique and dispense information about the Government's termination program and the effects of those terminations on wildlife, recreation, hunting, and the like. NWF's role is therefore similar to that of HOME in *Havens Realty Corp.*, 455 U.S. at 379, where the defendants' steering practices adversely affected HOME's ability to provide counseling and referral services.

Thus, NWF's claim of standing on its own account is compelling. But because of rulings in favor of NWF on other questions, the Court of Appeals never had to reach or decide this important issue, either in its original ruling on the preliminary injunction, Pet. App. 48a-59a, or in its ruling on summary judgment, Pet. App. 10a-21a. This Court should not address that issue without first

obtaining the views of that court,[69] particularly because (a) review of this issue would necessitate an analysis not just of the Erman affidavit but of the entire record, (b) the Government has discussed the issue in only three pages of its brief, Ptrs. Br. 41-43, and (c) even this discussion appears to miss the point.[70]

CONCLUSION

NWF respectfully submits, for the reasons set forth above, that:

(1) The writ should be dismissed as improvidently granted, or, in the alternative, the judgment below should be affirmed, because the Court of Appeals correctly ruled that, under D.C. Circuit law, the District Court abused its discretion in refusing to allow NWF to file five supplemental affidavits demonstrating without question its standing in this case; or

[69] *See International Brotherhood of Elec. Workers* v. *Heckler*, 481 U.S. 851, 865 (1987); *Escambia County* v. *McMillan*, 466 U.S. 48, 51-52 (1984); *J. Truett Payne Co.* v. *Chrysler Motors Corp.*, 451 U.S. 557, 568 (1981).

[70] For example, the Government wholly misperceives NWF's position when it contends that NWF failed to allege that the Government withheld "any particular information" and that "extensive files" were made available to NWF. Ptrs. Br. 42-43. NWF's argument is not that it was denied access to a particular piece of information already in the Government's possession but rather that the Government had an affirmative legal duty, which it breached, to create RMPs and EISs *before* terminations began under the Government's Program.

NWF examined over 200 case files provided in response to discovery and FOIA requests, but it did not accept the Government's offer to review additional files which the Government opened to inspection, *see* Pet. App. 32a n.8; Ptrs. Br. 42, because NWF already knew that the documents being sought had never been created and therefore could not possibly be in the files. For example, the Government conceded that it had prepared no EIS on the Program, Ans. to Plaintiff's 1st Set of Interrogatories No. 2(a), 2d Set of Interrogatories Nos. 14, 15, and that it had produced no EISs in response to NWF's discovery request. ER 186.

(2) The judgment below should be affirmed because the record as a whole, including the Peterson and Erman affidavits as well as the Government's own evidence, supports the Court of Appeals' finding that NWF has standing in its representational capacity; or

(3) The case should be remanded to the Court of Appeals for its finding in the first instance, not heretofore made, as to whether NWF has standing in its own right as an organization.

Respectfully submitted,

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APPENDICES

APPENDIX A

[NEPA]

42 U.S.C. § 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: * * * (2) all agencies of the Federal Government shall—

* * * *

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards,

shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

* * * *

[FLPMA]

43 U.S.C. § 1701. Congressional declaration of policy [§ 102]

(a) The Congress declares that it is the policy of the United States that—

* * * *

(2) the national interest will be best realized if the pub'ic lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts;

(3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before October 21, 1976, be reviewed in accordance with the provisions of this Act;

* * * *

(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;

* * * *

43 U.S.C. § 1702. Definitions [§ 103]

* * * *

(c) The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all

of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(d) The term "public involvement" means the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.

* * * *

(j) The term "withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

* * * *

43 U.S.C. § 1712. Land use plans [§ 202]

(a) Development, maintenance, and revision by Secretary

The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

* * * *

(d) Review and inclusion of classified public lands; review of existing land use plans; modification and termination of classifications

Any classification of public lands or any land use plan in effect on October 21, 1976, is subject to review in the land use planning process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification consistent with such land use plans.

* * * *

(f) Procedures applicable to formulation of plans and programs for public land management

The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.

43 U.S.C. § 1714. Withdrawals of lands [§ 204(a)]

(a) Authorization and limitation; delegation of authority

On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section. The Secretary may delegate this withdrawal authority only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate.

* * * *

(l) Review of existing withdrawals in certain States; procedure applicable for determination of future status of lands; authorization of appropriations

(1) The Secretary shall, within fifteen years of October 21, 1976, review withdrawals existing on October 21, 1976, in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming of (1) all Federal lands other than withdrawals of the public lands administered by the Bureau of Land Management and of lands which, on October 21, 1976, were part of Indian reservations and other Indian holdings, the National Forest System, the National Park System, the National Wildlife Refuge System, other lands administered by the Fish and Wildlife Service or the Secretary through the Fish and Wildlife Service, the National Wild and Scenic Rivers System, and the National System of Trails; and (2) all public lands administered by the Bureau of Land Management and of lands in the National Forest System (except those in wilderness areas, and those areas formally identified as primitive or natural areas or designated as national recreation areas) which closed the lands to appropriation under the Mining Law of 1872 (17 Stat. 91, as amended; 30 U.S.C. 22 et seq.) or to leasing under the Mineral Leasing Act of 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(2) In the review required by paragraph (1) of this subsection, the Secretary shall determine whether, and for how long, the continuation of the existing withdrawal of the lands would be, in his judgment, consistent with the statutory objectives of the programs for which the lands were dedicated and of the other relevant programs. The Secretary shall report his recommendations to the President, together with statements of concurrence or nonconcurrence submitted by the heads of the departments or agencies which administer the lands. The President shall transmit this report to the President of the Senate and the Speaker of the House of Representatives, together with his recommendations for action by the Secretary, or for legislation. The Secretary may act to terminate withdrawals other than those made by Act of the Congress in accordance with the recommendations of the President unless before the end of ninety days (not counting days on which the Senate and the House of Representatives has adjourned for more than three consecutive days) beginning on the day the report of the President has been submitted to the Senate and the House of Representatives the Congress has adopted a concurrent resolution indicating otherwise. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the

motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

* * * *

43 U.S.C. § 1732. Management of use, occupancy, and development of public lands [§ 302]

(a) Multiple use and sustained yield requirements applicable; exception

The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

* * * *

43 U.S.C. § 1739. Advisory councils [§ 309]

* * * *

(e) Public participation; procedures applicable

In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.

13 U.S.C. § 1719. Rules and regulations [§ 310]

The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands, and the Secretary of Agriculture, with respect to lands within the National Forest System, shall promulgate rules and regulations to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the provisions of chapter 5 of Title 5, without regard to section 553(a)(2). Prior to the promulgation of such rules and regulations, such lands shall be administered under existing rules and regulations concerning such lands to the extent practical.

[Public Law and Regulations]

Pub. L. No. 94-579, § 701.

* * * *

(c) All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law.

* * * *

43 C.F.R. § 1601.0-5. Definitions

* * * *

(k) "Resource management plan" means a land use plan as described by the Federal Land Policy and Management Act. The resource management plan generally establishes in a written document:

(1) Land areas for limited, restricted or exclusive use; designation, including ACEC designation; and transfer from Bureau of Land Management Administration;

(2) Allowable resource uses (either singly or in combination) and related levels of production or use to be maintained;

(3) Resource condition goals and objectives to be attained;

(4) Program constraints and general management practices needed to achieve the above items;

(5) Need for an area to be covered by more detailed and specific plans;

(6) Support action, including such measures as resource protection, access development, realty action, cadastral survey, etc., as necessary to achieve the above;

(7) General implementation sequences, where carrying out a planned action is dependent upon prior accomplishment of another planned action; and

(8) Intervals and standards for monitoring and evaluating the plan to determine the effectiveness of the plan and the need for amendment or revision.

It is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.

43 C.F.R. § 1601.0-6. Environmental impact statement policy

Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. The environmental analysis of alternatives and the proposed plan shall be accomplished as part of the resource management planning process and, wherever possible, the proposed plan and related environmental impact statement shall be published in a single document.

APPENDIX B

[Dept. Logo]

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

July 22, 1988

BLM.ER.0569

Kathleen C. Zimmerman, Esquire
National Wildlife Federation
1412 16th Street, N.W.
Washington, D.C. 20036

Dear Ms. Zimmerman:

As directed by the court, I am providing you with a copy of the exhibit submitted to the court by the Government on July 22, 1988.

Sincerely
/s/ Paul B. Smyth
PAUL B. SMYTH

Enclosure

RESOURCE MANAGEMENT PLANNING

Table I

Resource Management Planning Summary
July 20, 1988

State Office	Number of Plans Completed Through NOI	Draft	Proposed/Final	Number of Plans Approved
Alaska	2	1	0	3
Arizona	2	1	0	2
California	1	1	0	4
Colorado	1	1	1	6
Idaho	0	0	0	7
Montana	0	1	0	6
Nevada	0	0	0	7
New Mexico	0	1	3	2
Oregon	6	1	1	3
Utah	2	1	1	6
Wyoming	0	2	2	4
TOTALS	14	10	08	50

Table II

Surface Acres covered by RMPs
July 20, 1988

	# of RMPs	Total Surface Acres covered by RMPs	Total Surface Acres Administered	% Public Lands covered by RMP
Bureauwide	50	81,908,000	333,283,000	25.6
Exclu. Alaska	47	70,201,000	175,990,000	39.9

Table III

Statutes of Resource Management Plans in Progress
July 20, 1988

State/Plan		NOI	Draft	Proposed	Status
AK	Fort Wainwright	07/21/87			Draft exp. 9/88
	Fort Greeley	07/21/87			Draft exp. 9/88
	South Central				NOI exp. 11/88
	Utility Corridor	01/16/86	08/28/87		Final exp. FY89
AZ	Arizona Strip	07/22/87			Draft exp. FY89
	Kingman				NOI exp. FY88
	Phoenix	01/17/86	02/29/88		Final exp. FY89
	Safford	09/22/87			Draft exp. 5/89
CA	Arcata	01/29/86	03/18/88		Final exp. FY89
	Bishop	06/27/88			Draft exp. FY88
	South Metro				NOI exp. FY89
	Redding				NOI exp. FY89
CO	Gunnison Basin				NOI exp. FY88
	Little Snake	10/22/84[1]	02/07/86	10/03/86	Pending Revised Protest
	San Luis	01/16/86			Draft exp. 1/89
	Uncompahgre	07/28/83	07/31/87		Final exp. 9/88
MT	Judith/Phillips/Valley				NOI exp. 7/88
	West Hi-Line	09/18/86[2]	06/05/87		Final exp. 7/88
NV	Nellis				NOI exp. 7/88
NM	Carlsbad	10/25/83	03/21/86	10/10/86[3]	Under protest
	Farmington	05/16/85	03/06/87	09/25 87	Under protest
	Socorro	01/28/86	01/22/88		Final exp. 9/88
	Taos	01/26/84	03/27/87	10/09/87	ROD Pending
OR	Baker	03/05/85	04/18/86	10/03/86	ROD Pending
	Brothers/LaPine	09/03/86	10/23/87		Final exp. 10/88
	Coos Bay	09/03/86			Draft exp. 10/89
	Three Rivers (D/R)	09/28/87			Draft exp. FY89
	Eugene	09/03/86			Draft exp. 10/89
	Medford	09/03/86			Draft exp. 10/89
	Roseberg	09/03/86			Draft exp. 10/89
	Salem	09/03/86			Draft exp. 10/89

[1] Original Little Snake NOI published 6/23/83.

[2] Original West Hi-Line NOI published 12/6/83.

[3] Supplement to proposed Carlsbad RMP issued 12/16/86.

State/Plan		NOI	Draft	Proposed	Status
UT	Diamond Mountain				NOI exp. FY88
	Dixie	11/14/86			Draft exp. FY89
	Pony Express	11/21/86	05/13/88		Final exp. 9/88
	San Juan	03/11/83	06/20/86	12/28/87	Under protest
	San Rafael	06/03/85			Draft exp. 8/88
WY	Cody	02/09/86	04/01/88		Final exp. 9/88
	Green River				NOI exp. FY88
	Medicine Bow	02/28/86	06/19/87		Final exp. 9/88
	Pinedale	09/30/83	03/06/87	12/04/87	ROD pending
	Washakie	02/03/83	11/21/86	11/13/87	Under protest

Table IV

Approved Resource Management Plans
July 20, 1988

State/Plan Name	Date NOI Published	Date ROD Approved	Surface Acres Covered by RMP
Alaska			
Central Yukon	11/51/82	09/26/86	9,487,000
Steese	11/16/81	02/02/86	1,220,000
White Mountain	11/16/81	02/02/86	1,000,000
Total			11,707,000
Arizona			
Lower Gila South	6/14/83	05/11/87[1]	2,009,000
Yuma	05/04/83	05/01/86[2]	1,192,000
Total			3,201,000
California			
Alturas	09/30/80[3]	08/28/84	407,000
CDCA	N.A.	12/19/80	12,131,000
Coast/Valley	09/30/82	09/06/85	237,000
Hollister	02/26/82	08/06/84	238,000
Total			13,103,000
Colorado			
Glenwood Springs	10/19/79	01/03/84	566,000
Grand Junction	12/08/82	01/29/87	1,280,000
Kremmling	01/18/80	12/19/84	398,000
Northeast	11/14/80	09/16/86	32,000
Piceance Basin	07/22/82	03/13/87	604,000
San Juan/San Miguel	01/05/81	09/05/85[4]	994,000
Total			3,874,000
Idaho			
Cascade	11/25/83	07/01/88	488,000
Cassia	02/06/81	01/24/85	476,000
Jarbidge	02/10/81	03/23/87	1,690,000
Lemhi	07/07/83	04/08/87	460,000
Medicine Lodge	03/26/81	11/29/85	649,000
Monument	03/19/81	04/22/85	1,179,000
Pocatello	01/17/85	01/08/88	265,000
Total			5,207,000

[1] Partial Lower Gila South RMP approved 5/11/87; complete ROD pending.

[2] Partial Yuma RMP approved 5/1/86; complete RMP approved 5/23/88.

[3] Alturas RMP NOI Amended 3/31/88.

[4] Partial San Juan/San Miguel RMP approved 8/85; complete RMP approved 9/85.

Table IV (Continued)

State/Plan Name	Date NOI Published	Date ROD Approved	Surface Acres Covered by RMP
Montana			
Billings	08/18/80	09/28/84	432,000
Garnet	02/20/81	01/10/86	146,000
Headwaters	03/05/80	07/ /84	311,000
North Dakota	12/29/84	04/19/88	67,500
Powder River	06/19/80	03/15/85	1,081,000
South Dakota	06/04/82	04/14/86	281,000
Total			2,318,000 [sic]
Nevada			
Egan	07/16/82	02/03/87	3,800,000
Elko	11/09/83	03/11/87	3,134,000
Esmeralda/So. Nye	03/11/83	10/10/86	3,400,000
Lahontan	07/09/81	09/03/85	2,400,000
Shoshone/Eureka	03/02/81	02/26/86	4,300,000
Walker	03/31/83	06/09/86	1,900,000
Wells	05/23/80	07/16/85	4,300,000
Total			23,234,000
New Mexico			
Rio Puerco	03/23/83	01/16/86	896,000
White Sands	08/23/83	09/05/86	1,800,000
Total			2,696,000
Oregon			
John Day	01/28/81	08/28/85	182,000
Spokane	07/21/83	05/19/87	308,000
Two Rivers	09/21/84	06/06/86	325,000
Total			815,000
Utah			
Book Cliffs	03/07/80	06/03/85	1,080,000
Box Elder	09/21/84[5]	04/18/86	1,012,000
Cedar/Beaver/ Garfield/Antimony	04/10/80	10/01/86	1,071,000
Grand	02/12/80[6]	06/24/85	1,853,000
House Range	05/01/85[7]	10/28/87	2,245,000
Warm Springs	05/01/85[8]	03/30/87	2,227,000
Total			9,488,000

[5] Box Elder RMP NOI Amended 1/25/88.

[6] Grand RMP NOI Amended 2/11/88.

[7] House Range NOI initially published 1/12/83; amended 6/6/83.

[8] Warm Springs NOI initially published 2/8/80.

Table IV (Continued)

State/Plan Name	Date NOI Published	Date ROD Approved	Surface Acres Covered y RMP
Wyoming			
Buffalo	04/04/82	10/04/85	799,000
Kemmerer	10/07/81	04/29/86	1,633,000
Lander	01/26/84	06/19/87	2,500,000
Platte River	12/02/81	08/05/85	1,400,000
Total			6,332,000